IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO.547 OF 2004

IN

SUMM.SUIT NO.1382 OF 2004

Suresh L. Makhija .. Plaintiff

versus

Kirit S.Joshi & anr .. Defendants

Mr Devang Sanghvi for Plaintiff

CORAM : D.G. KARNIK, J

DATED : 13th April 2005.

P.C:-

1. Heard learned counsel for the plaintiff. NOne present for the defendants.

2. Perused the affidavit of service. Despite service of the Summons for Judgment the defendants have not filed an application for leave to defend the suit nor has filed any affidavit in reply. In the

circumstances, the averments made in the plaint are deemed to be admitted. Learned counsel for the plaintiff hand in the original documents under a compilation. The documents are taken on record and marked A collectively.

3. I have perused the plaint and the documents on record. The defendant no. 2 is the partner of defendant no.1. For a valuable consideration the defendant no.2 executed a promissory note in favour of the plaintiff in the sum of Rs.50,000/-. The promissory note is signed by the defendant no. 1 in the capacity as a partner of the defendant no.2. The defendant no. 2 also issued a cheque in the sum of Rs.50,000/- in favour of the plaintiff. However, the cheque was dishonoured when presented for payment. In the circumstances, the plaintiff is entitled to a decree under order 37 Rule 3 (6) of the Code of Civil Procedure. Hence, I pass the following order :

> " Summons for Judgment is made absolute and the suit of the plaintiff is decreed as follows:
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> " The defendants shall pay to the plaintiff a

sum of Rs.71,750/- together with interest on the principal sum of Rs.50,000/- at 9 % p.a. from the date of the suit till payment and all costs of the suit. "

D.G.KARNIK, J